

## THE CHANCELLOR :

That the bill in this case, justified the court in interposing, by way of injunction, to prevent the apprehended injury to the property of the plaintiff, is undeniable. Nothing can be clearer, than the power of the court to prohibit the obstruction of water courses, the diversion of streams from mills, the back-flowage upon them, and injuries of the like kind, which, from their nature, cannot be adequately compensated by damages at law. 2 *Story's Eq.*, section 927; *Hammond vs. Fuller*, 1 *Paige*, 197; *Gardner vs. Village of Newburg*, 1 *Johns. Ch. R.* 165; 1 *ib.*, 272.

The bill in this case, after alleging that the defendants had filled up the original channel of the stream, upon which the plaintiff's mill stands, and below it, so as to back the water upon his mill-dam, and that in order to give some vent to the stream, had dug an artificial trench, which was inadequate to the object, charged that they were now engaged in filling up this new channel, and it prays that they may be restrained by injunction, from making further deposits below the mill-dam of the complainant, and along the bank of the present channel of the stream, so as to back the water against said dam. An injunction was granted accordingly, and the answer having been filed, the motion to dissolve it was submitted upon written arguments.

The bill, then, is to restrain a private nuisance, and, according to the authorities, the court would, after hearing the parties, be authorized, not only in interposing, preventively, but might order it to be abated. This, however, is not the application, it being simply an application to the court, to order a thing going on, to be stayed, to do which, the power is questioned. The answer in this case, might, perhaps, have been sufficient to dissolve the injunction, but depositions have been taken by consent, to avoid the necessity of an application to the court, under the act of 1835, ch. 380, section 8. And from an examination of them, I am satisfied it ought to be continued. It appears from the proof, that the defendants claim the right to persist in making deposits of earth, &c., in situations which